



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: June 28, 2013

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary
Steve Ingham, Administrator, Division of Food Safety

Steve Ingham

SUBJECT: Regulation of Milk Haulers, and affecting small business; Rulemaking Scope Statement

PRESENTED BY: Steve Ingham, Division of Food Safety

REQUESTED ACTION:

At the July 16, 2013 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a "scope statement" (copy attached) for proposed changes to current DATCP rules related to milk hauling.

If the proposed scope statement is approved, the department will promulgate a rule adopting a provision of the PMO allowing milk haulers to make partial collections of milk from bulk tanks on dairy farms under certain conditions. Currently, ch. ATCP 82, Wis. Adm. Code, requires that bulk milk tanks be emptied each time milk is collected. This requirement is outdated and inconsistent with practices in other states that adopt the Food and Drug Administration's (FDA) Pasteurized Milk Ordinance (PMO). Milk hauling companies report that this requirement creates an unnecessary burden, causing problems with meeting road weight-limit regulations and preventing them from managing their milk hauling practices most efficiently. The department is also requesting approval of a separate scope statement that would allow the department to adopt the PMO regulations regarding partial collection of milk as an emergency rule. This rule would make those rule changes permanent. If approved, the department would also update other requirements in ch. ATCP 82 related to bulk milk tank licensing, license renewal requirements for bulk milk weigher samplers, and practices for washing and sanitizing bulk milk tankers.

A scope statement spells out the general purpose and scope of a proposed rule. DATCP may not begin drafting a proposed rule (including a proposal to amend or repeal an existing rule) until the Governor approves a scope statement for that rule as required under s. 227.135(2), Stats. This scope statement was approved by the Governor on June 14, 2013. Wisconsin statutes also require the DATCP Board to approve a scope statement before the department can begin to draft a proposed rule. DATCP is required to publish a draft scope statement in the Wisconsin Administrative Register, and file a copy with the Department of Administration (DOA), at least 10 days before the Board approves the scope statement. DATCP filed the attached scope statement with the Legislative Reference Bureau for publication in the July 1, 2013 issue of the Wisconsin Administrative Register and filed a copy with DOA as required.

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Approval of a scope statement is just the first, preliminary step in a lengthy rulemaking process. The Board will have at least two further opportunities to review the proposed rule. Before DATCP holds public hearings on this rule, the department must prepare an economic impact analysis and the Board must approve a hearing draft. The Board must also approve the final draft rule before DATCP may adopt the rule.

STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Ch. ATCP 82, Wis. Adm. Code (Existing)

Relating to: Milk haulers and affecting small business.

1. Description of the objective of the rule:

Ch. ATCP 82 (Milk Haulers) regulates bulk milk tanker licensing, construction, maintenance, cleaning and sanitizing requirements; bulk milk weigher sampler requirements, and mandatory procedures for collecting milk from dairy farms, collecting milk samples for testing, and delivering milk from a dairy farm to a dairy plant. The department proposes a rule in Ch. ATCP 82 adopting a provision of the Food and Drug Administration's (FDA) Pasteurized Milk Ordinance (PMO) which would allow milk haulers to make partial collections of milk from bulk tanks on dairy farms under certain conditions. Currently, bulk milk tanks must be emptied each time milk is collected. The proposed revision would allow partial collections and would necessarily also entail revision of requirements for milk agitation and cooling, bulk tank milk temperature measurement, the cessation of pumping milk to a bulk tank when a partial collection is being made from that tank, bulk tank cleaning and sanitizing, and the applicability of a positive drug residue test result to all partial loads containing milk from the same milking. The department also proposes to make other changes to ATCP 82 dealing with an exemption of Wisconsin license requirements for trucks holding a Grade "A" permit from another state, exemption of tanker Grade "A" permit requirements for employees of an already permit-holding bulk milk tanker owner, bulk milk weigher sampler license renewal requirements, re-inspection of bulk milk weigher samplers, washing and sanitizing of bulk milk tankers and associated hoses and pumps, thermometer calibration, rinsing of bulk tank volume measurement rods, supplies required for milk collection and sampling, and sealing of the bulk milk tanker access port. The other changes proposed would be made to ensure consistency between Ch. ATCP 82 and the PMO, and would reflect evolving industry standards.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

Wisconsin ranks second nationally in milk production and operates the nation's largest state dairy inspection program. Wisconsin has by far the largest number of dairy farms operated by licensed dairy producers; the milk from each of these farms is shipped to one of the 400+ licensed dairy plants in the state, or to a licensed dairy plant in another state. Milk must be collected from each farm in a licensed bulk milk tanker, and a licensed bulk milk weigher sampler must properly record the amount of milk collected and sample the milk on each farm for testing.

Current Wisconsin regulations in ch. ATCP 82 require that all milk present in a bulk tank must be collected when a collection is made, i.e. partial collection is forbidden. The original intent of this regulation was to ensure that a dairy producer's bulk tank(s) was regularly cleaned and sanitized, and to ensure that collection-to-collection transfers of illegal drug residues did not occur, which could result in increased financial losses to dairy producers forced to dump multiple loads of milk.

Despite the worthwhile intentions which led to it being written, the requirement prohibiting partial collection of milk from a bulk tank is outdated. Farm sanitation methods have improved since Wisconsin's rule was first adopted. Frequent testing allows dairy plants to quickly address problems related to bulk tank cleanliness. As the number of dairy farms has decreased, farms have become larger, and per cow milk production has risen, many farms have purchased larger bulk tanks, creating new challenges for managing milk collection. For example, some farms now have bulk milk tanks that hold 7,000 or more gallons of milk, while other farms may have several smaller tanks. A typical milk truck carries approximately 6,000 gallons of milk. Allowing partial collection of milk from bulk tanks will give dairy plants the tools they need to more efficiently manage milk collection from these farms and avoid loading trucks beyond legal capacity. In the long run, increased flexibility for collection of milk could result in fewer trips required to haul milk, with associated fuel savings, and less wear and tear on roadways.

The PMO allows partial collection of milk provided that the bulk tank is emptied, cleaned and sanitized within at least 72 hours. The PMO also requires an acceptable temperature-recording device to be installed and operating on any bulk tank from which partial collections are made. The bulk milk weigher sampler, and regulatory personnel are required to observe temperature records to be sure that loss of temperature control, which can lead to unacceptable bacterial growth, did not occur following a partial collection. In absence of a temperature-recording device, partial pickups are permitted under the PMO as long as the bulk tank is emptied completely, cleaned and sanitized prior to the next milking. This proposed rule adopts these PMO standards.

Approximately 4,000 bulk milk tankers from Wisconsin and other states deliver milk to Wisconsin dairy plants. By regulation each of these trucks must be licensed in Wisconsin and, if carrying Grade "A" milk, hold a Grade "A" permit. It is logistically challenging to license all of these tankers, particularly those which are infrequently in Wisconsin. The department will consider removing the licensing requirement and fee while accepting Grade "A" permits issued by any state and instituting a Grade "A" permit inspection fee for bulk milk tankers based in Wisconsin. This change would benefit the milk hauling industry and allow re-assignment of department sanitarians to other tasks. The department will also consider removing a confusing exemption of tanker Grade "A" permit requirements for employees of an already permit-holding bulk milk tanker owner. Removal of this exemption will bring Wisconsin requirements in line with the PMO and create a level playing field for milk haulers.

The department currently licenses about 3,700 bulk milk weigher samplers, who measure the weight of milk collected and obtain a representative sample of each producer's milk for mandatory testing. The PMO requires a biennial field examination of each bulk milk weigher sampler before license renewal to ensure that s/he is using proper sample collection technique. Wisconsin regulations make the field examination optional. In order to improve consistency

with the PMO, the department will consider changing the current bulk milk weigher sampler examination regulations, along with the re-inspection procedure used to evaluate bulk milk weigher samplers who have been found to be in violation of Wisconsin food safety law.

The department will also consider updating requirements for washing and sanitizing of bulk milk tankers and associated hoses and pumps, thermometer calibration, rinsing of bulk tank volume measurement rods, supplies required for milk collection and sampling, and sealing of the bulk milk tanker access port. These updates will improve consistency between Wisconsin rules and the PMO, while reflecting current industry standard practices.

Policy Alternatives. If the department does not alter the current rules, Wisconsin dairy plants will lack the flexibility dairy plants have in other states that adopt the PMO standard and allow plants to collect partial loads of milk. Dairy plant operators will be prevented from managing their milk hauling practices in the most cost efficient and profitable manner and will be required to continue to empty bulk tanks each time they make a pickup, even if that means trucks are not filled to capacity or over-capacity milk is dumped. Not changing this policy has the potential to negatively impact dairy plant and producer costs, causing companies to incur unnecessary fuel and other costs associated with hauling milk, putting them at an economic disadvantage to dairy producers in other states that have adopted the PMO standard. These unnecessary trips also may damage Wisconsin roads. In addition, failure to update requirements, such as those related to tanker permits, bulk milk weigher sampler examination and re-inspection, and washing and sanitizing of bulk milk tankers and associated hoses and pumps, decreases the department's flexibility in assigning work while increasing the likelihood of obtaining an unacceptable score when the department's milk regulatory program is evaluated for PMO-compliance by the FDA.

3. Statutory authority for the rule (including the statutory citation and language): Statutory Authority: ss. 93.07 (1), 97.09 (4), and 97.21 (6), Stats.

93.07 Department duties. It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

97.09 Rules.

(4) The department may, by rule, establish and enforce standards governing the production, processing, packaging, labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.

97.21 Milk haulers and milk distributors.

(6) **RULE MAKING.** The department may promulgate rules to establish amounts of fees required under sub. (4) or to regulate bulk milk tanker operators and milk distributors. The rules may include standards for the construction, maintenance and sanitary operation of bulk milk tankers, milk distribution vehicles and milk distribution facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; storage and handling of milk and fluid milk products; identification of bulk milk tankers and milk distribution vehicles; and record keeping.

4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

DATCP estimates that it will use approximately 0.10 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

5. Description of all entities that may be impacted by the rule:

Dairy producers will gain increased flexibility regarding volume of bulk milk tanks they purchase to store increased milk volumes. For example, a producer may choose to install a second, smaller bulk tank (to reduce capital equipment costs) because the milk hauler could collect a truckload from the larger tank on the existing schedule and less often collect a partial load from the larger tank plus the additional milk accumulated in the smaller tank. Under the proposed rule, milk haulers will also gain increased flexibility in scheduling collections. For example, fewer milk tanker trips could be necessary for a producer who has two bulk tanks, one of which is completely emptied on the existing schedule and the other one which is used to "top up" a tanker for two consecutive days and is then emptied completely into a second tanker every third day. Reducing the number of milk tanker trips in situations like this could reduce damage to roadways and hauling costs for the dairy plant. Dairy producers and milk haulers would also benefit in the situation where the amount of milk in the farm bulk tank exceeds the remaining capacity of a milk tanker. Currently, the excess milk must be dumped. Under the proposed rule, the milk tanker could be filled to its limit, and the remaining milk held over for an additional collection by a truck with appropriate capacity. Dairy plant operators and milk haulers would benefit from Wisconsin recognizing other states' Grade "A" milk tanker permits. More consistent evaluation of bulk milk weigher samplers would reduce the likelihood of measurement error or invalid milk quality testing results – outcomes that could benefit dairy producers and dairy plant operators alike.

6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:

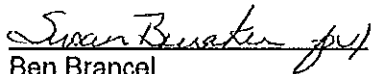
The proposed rule would adopt federal PMO regulations related to partial collection of milk from bulk tanks. The federal guidelines in the PMO allow partial collection of milk. Wisconsin's regulations are more stringent than the PMO and do not allow for partial collection of milk from bulk tanks. Several other provisions of the PMO would be adopted, thus decreasing the

likelihood of inconsistencies in milk regulation between states. Although compliance with the PMO is technically a voluntary effort by state regulatory agencies, Wisconsin is periodically evaluated by the FDA for compliance with PMO standards. Failure to pass the FDA audit would jeopardize the state's interstate and international dairy industry.

7. Anticipated economic impact

This rule change is anticipated to have no negative impact, but a positive economic impact for Wisconsin's dairy industry. It will make Wisconsin's regulations regarding partial collection of milk from bulk tanks, and other milk hauling procedures, consistent with practices in other states, including those elsewhere in the Upper Midwest. It will allow dairy plants to manage their milk hauling practices more efficiently and profitably. Although the proposed rule will allow partial collection of bulk milk, it is not anticipated to be a widespread practice, but one tool that a dairy plant may use to manage milk hauling practices. The rule may reduce milk tanker licensing costs to industry. The rule will not modify fees or have an economic impact on local governmental units or public utility taxpayers.

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Ben Brancel

Secretary

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6-16-17
Date Submitted

